

Message Text

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ORIGIN EB-11

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FM SECSTATE WASHDC

TO AMEMBASSY DUBLIN

INFO AMEMBASSY BERN

USMISSION NATO

AMEMBASSY BRUSSELS

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CINCEUR

CINCUSAFE

C O N F I D E N T I A L STATE 086765

E. O. 11652: GDS

TAGS: ETRN, MARR, EI

SUBJECT: EUROCONTROL - AVIATION USER CHARGES

REF : (A) DUBLIN 464 (B) STATE A-1340

1. RE FONOFF REQUEST PER REF (A) FOR LIST OF COUNTRIES
WITH WHICH USG HAS CONCLUDED AGREEMENTS ON " EXEMPTION
FROM EUROCONTROL CHARGES", YOU SHOULD EXPLAIN TO GOI THAT
THE AGREEMENTS REFERRED TO IN REF (B) ARE DEFENSE AGREE-
MENTS WHICH RECOGNIZE GENERAL EXEMPTION FROM CHARGES ON
MILITARY AIRCRAFT, AND DO NOT MENTION SPECIFICALLY TERM
" EUROCONTROL". TO PRECLUDE MISUNDERSTANDING, EMB
REQUESTED REITERATE POINT MADE IN REF (B) THAT UNDER
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A RECOGNIZED PRINCIPLE OF CUSTOMARY INTERNATIONAL PRACTICE
AND LAW FOLLOWED BY USG, STATE AIRCRAFT, WHICH TERM
INCLUDES AIRCRAFT USED IN THE MILITARY SERVICES, ARE
EXEMPT FROM TAXES, DUTIES AND SET FEES NORMALLY IMPOSED

ON CIVIL AIRCRAFT, AND THAT OVERFLIGHT CHARGES AND FEES FOR THE USE OF FIXED FACILITIES, SUCH AS NAVIGATIONAL AIDS AND RUNWAYS, FALL WITHIN THE CATEGORY OF CHARGES NOT NORMALLY IMPOSED ON STATE AIRCRAFT. IT MAY ALSO BE USEFUL FOR EMB TO REITERATE THAT STATE AIRCRAFT, AT LEAST US STATE AIRCRAFT, PAY FOR SERVICES WHICH HAVE BEEN RENDERED IN A HOST COUNTRY AT THE REQUEST OF THE AIRCRAFT COMMANDER OR OTHER COMPETENT AUTHORITY.

2. EMB SHOULD EXPLAIN TO GOI THAT USG DOES NOT CONSIDER GENERAL EXEMPTION FROM CHARGES ON MILITARY AIRCRAFT AS STEMMING FROM BILATERAL OR MULTILATERAL AGREEMENTS, BUT RATHER FROM THE ABOVE DESCRIBED PRINCIPLE OF CUSTOMARY INTERNATIONAL PRACTICE AND LAW. IN RECOGNITION OF THAT PRINCIPLE, DEFENSE ARRANGEMENTS WHICH USG HAS CONCLUDED WITH OTHER EUROCONTROL MEMBERS AND ASSOCIATE MEMBERS INCORPORATE WITHOUT EXCEPTION THE CONCEPT OF SUCH EXEMPTIONS. FOR INFORMATION OF GOI, EMB MAY FIND IT HELPFUL TO PROVIDE VARIOUS AGREEMENT EXCERPTS QUOTED BELOW. HOWEVER, EMB SHOULD EMPHASIZE THAT USG DOES NOT SEEK ANY SPECIFIC AGREEMENT WITH GOI WITH INTENT OF OBTAINING EXEMPTIONS, BUT IS SIMPLY ASKING GOI ACKNOWLEDGEMENT OF THE AFORE- STATED PRINCIPLE OF CUSTOMARY INTERNATIONAL PRACTICE AND LAW. THIS ACKNOWLEDGEMENT MAY BE RECORDED IN AN INFORMAL DOCUMENT, E. G. MEMORANDUM FOR THE RECORD OR LETTER, DEPENDING ON THE DESIRE OF THE APPROPRIATE GOI AUTHORITIES. THE RESULT OF THE ACKNOWLEDGEMENT SHOULD, OF COURSE, BE CESSATION OF EUROCONTROL BILLING BY GOI. FYI: WE WOULD CONSIDER IT INADVISABLE TO SUGGEST THAT PARTIES TO EUROCONTROL REVISE PARA 1 OF ARTICLE 15 OF " TARIFFS AND CONDITIONS OF APPLICATION OF USER CHARGES", TEXT OF WHICH WAS SENT TO YOU WITH REF (B) OR FOR USG TO SEEK THE TYPE OF AGREEMENT WITH GOI CONTEMPLATED BY PARA 2 OF PARTICLE 15. SEEKING REVISION OF PARA 1 OF ARTICLE 15 COULD STIMULATE THOSE EUROCONTROL MEMBERS AND ASSOCIATE MEMBERS WHICH ARE NOT NOW LEVYING AVIATION USER CHARGES ON MILITARY

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AIRCRAFT TO CHANGE THEIR PRACTICE.

WE APPRECIATE THAT ARRANGEMENT, DESIRED BY USG TO RECOGNIZE EXEMPTION PRINCIPLE DISCUSSED ABOVE, WILL ALSO SERVE TO SATISFY OBLIGATION ON GOI, IMPOSED BY PARA 2 OF ARTICLE 15, TO OBTAIN BILATERAL EXEMPTION AGREEMENT OR OTHER ARRANGEMENT; HOWEVER, IN ORDER TO AVOID INFERENCE THAT EUROCONTROL REGULATIONS HAVE ANY BINDING EFFECT ON USG, AND TO FURTHER AVOID INFERENCE THAT EXEMPTION FLOWS FROM AGREEMENTS RATHER THAN FROM THE PRINCIPLE OF CUSTOMARY INTERNATIONAL PRACTICE AND LAW, WE PREFER THAT BILATERAL ARRANGEMENT BETWEEN USG AND GOI NOT, REPEAT NOT, CONTAIN ANY REFERENCE TO EUROCONTROL GENERALLY OR TO

PARA 2 OF ARTICLE 15 SPECIFICALLY. END FYI.

A. EXAMPLE OF PROVISIONS IN BILATERAL AGREEMENTS:

(I) THE DEFENSE AGREEMENT CONCLUDED BY THE USG WITH GOS ON SEPTEMBER 25, 1970, ENTITLED " USE OF MILITARY

FACILITIES IN SPAIN" (TIAS 6977) CONTAINS THE FOLLOWING PROVISION IN PROCEDURAL ANNEX VII:

PARAGRAPH 2.5.

" THE USE OF THE SPANISH AIR BASES AND AIRPORTS BY AIRCRAFT OF THE US FORCES SHALL BE FREE OF ALL CHARGES, TAXES, OR ENCUMBRANCES. PAYMENT WILL BE MADE FOR MATERIAL ASSISTANCE."

THE TERM " AIRPORTS" COVERS CIVIL AIRPORTS IN SPANISH TERRITORY.

B. MULTILATERAL AGREEMENTS:

NATO STANAG 3113 3 RD EDITION. THE STANDARDIZATION AGREEMENT IN QUESTION IS TO PROVIDE, AMONG OTHER MATTERS, FACILITIES TO MILITARY AIRCRAFT OF NATO NATIONS ON NATO AIRFIELDS AND MILITARY AIRFIELDS WITHIN NATO COUNTRIES. THIS STANAG WAS SIGNED BY THE FOLLOWING EUROCONTROL GOVERNMENTS: BELGIUM, FRANCE, FEDERAL REPUBLIC OF CONFIDENTIAL

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GERMANY, THE NETHERLANDS AND UNITED KINGDOM AND BY THE FOLLOWING ASSOCIATE EUROCONTROL STATES: DENMARK, ITALY, NORWAY AND PORTUGAL. THE STANAG STATES IN ITS ANNEX " A": " FACILITIES PROVIDED FREE OF CHARGE (WHERE NO APPRECIABLE EXTRA EXPENSE TO THE HOST NATION IS INVOLVED): USE OF AIRFIELD, INCLUDING USE OF HANGARS, NAVIGATIONAL AIDS AND TRAFFIC CONTROL, AND OTHER USUAL SERVICING FACILITIES."

3. WHILE FOREGOING EXCERPTS FROM DEFENSE AGREEMENTS MAY BE USEFUL TO RESPOND TO GOI QUERY REPORTED REF (A), IT IS EMPHASIZED THAT EMB SHOULD SEEK SIMPLE ACKNOWLEDGEMENT BY GOI THAT " STATE AIRCRAFT OF THE UNITED STATES, INCLUDING AIRCRAFT USED IN THE MILITARY SERVICES, ARE EXEMPT FROM ALL TAXES, DUTIES AND SET FEES NORMALLY IMPOSED ON CIVIL AIRCRAFT BY THE GOVERNMENT OF IRELAND OR ITS AGENCIES AND INSTRUMENTALITIES. THIS EXEMPTION INCLUDES OVER-FLIGHT CHARGES AND FEES FOR THE USE OF FIXED FACILITIES, SUCH AS NAVIGATIONAL AIDS, BUT DOES NOT INCLUDE PAYMENT FOR SERVICES RENDERED AT THE REQUEST OF THE AIRCRAFT COMMANDER OR OTHER COMPETENT AUTHORITY." AT EMB'S DISCRETION, THIS ACKNOWLEDGEMENT COULD BE PREFACED

WITH MUTUAL RECOGNITION THAT EXEMPTION IS " BASED ON

PRINCIPLE OF CUSTOMARY INTERNATIONAL PRACTICE AND
LAW." ROGERS

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